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Comment from Truth Initiative

Posted by the **Federal Trade Commission** on May 28, 2024

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Attachments 1



Truth Initiative Comment on FTC Cigarette and Smokeless Tobacco Reports

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Truth Initiative

May 28, 2024

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
ATTN: Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J)
Washington, DC 20580

RE: Tobacco Reports; PRA Comment: FTC File No. P072108

Dear Chairwoman Khan:

Truth Initiative writes today to wholeheartedly support the renewal of the information collection of the Federal Trade Commission (FTC) Cigarette and Smokeless Tobacco Reports and to reiterate their powerful utility. We also propose some suggestions to enhance the quality and make the utility of these information collections even more valuable. We appreciate the opportunity to provide information based on our expertise as a public health and public education and marketing organization during this public comment period.

Truth Initiative is a national nonprofit public health organization committed to a future where commercial tobacco and nicotine addiction are a thing of the past. Our mission is to prevent youth and young adult nicotine addiction and empower quitting for all. Through our evidence-based, market-leading cessation EX Program and the nationally recognized truth® public education campaign, we are leading the fight against teen and young adult tobacco use as e-cigarettes threaten to put a new generation at risk of nicotine addiction. Our first-of-its-kind text message quit vaping program, This Is Quitting, has enrolled over 745,000 young people across the country, and our youth e-cigarette prevention curriculum, Vaping: Know the truth®, is currently implemented in over 9,000 schools nationwide, reaching a total of over one million students thus far. Our rigorous scientific research and policy studies, community and youth engagement programs supporting populations at high risk of using tobacco, and innovation in tobacco dependence treatment continue to contribute to ending one of the most critical public health battles of our time. Based in Washington D.C., our organization was established and funded through the 1998 Master Settlement Agreement between attorneys general from 46 states, five U.S. territories, and the tobacco industry.



Utility of the Data

First, Truth Initiative reiterates, as it has for many years, the critical importance and utility of these data collections. The Cigarette and Smokeless Tobacco Reports provide information that is not available elsewhere and is not duplicative of other data collections. These reports often provide the basis for strong public health policies with regard to tobacco use and marketing – these are policies that save lives. The advertising and marketing of cigarettes and smokeless tobacco contribute to youth initiation of these products.¹ Without the data FTC collects for these reports, researchers, public health practitioners, advocates, and the public in general would have a much less complete picture of the tobacco industry's tactics to lure new users and keep current users of their deadly products.

Truth Initiative thanks the FTC for making changes to the Cigarette and Smokeless Tobacco report orders over the years so that the reports continue to be relevant and reflect the current cigarette and smokeless tobacco marketplace. For example, we appreciate that while previous information requests only sought information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches, FTC now seeks to collect information concerning advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches. As FTC has noted, the need to collect this information is predicated upon the fact that sales of tobacco-free nicotine lozenges and pouches more than doubled between 2020 and 2022, and these products appear to be especially popular with youth.²

As the tobacco industry's products and marketing evolve, we respectfully submit suggestions to continue to improve the utility of these data and ensure that they accurately reflect the current market situation, as well as marketing strategies, employed by the industry.

Ensuring Low Nicotine Cigarettes and their Marketing are Included in the Reports

Truth Initiative recommends that FTC ensure that marketing data on low nicotine cigarettes are captured in the Cigarette Report. While the market share of these products is extremely small compared to other products, it is important that we understand the kind of marketing that is used to promote these products. This is especially relevant since FDA has authorized the marketing of 22nd Century Group's Moonlight and Moonlight Menthol low nicotine cigarettes.³ Cigarettes containing non-addictive levels of nicotine have the potential to help smokers quit.⁴ However, the marketing of such products plays a critical role in any public health benefit these products may have. If marketed irresponsibly they could pose considerable public health harms.⁴ While they do not enjoy the same level of market share that the companies that the FTC currently surveys do, given the potential public health benefits – and the potential harms if not marketed correctly - of low nicotine cigarettes, it is important to understand how and to what extent they are marketed.



To that end, we respectfully recommend that you add 22nd Century to the list of companies that are required to fill out future Cigarette Orders. Further, we recommend that for future Cigarette Orders, you add a question about whether the product is low nicotine.

Ensuring the Content of Advertising is Included in the Reports

FTC should also collect information on the content of and how the companies are advertising certain products like heat non-combusted cigarettes and oral nicotine products, whether they are being advertised as less harmful or better alternatives to traditional cigarette and smokeless tobacco products or advertising the products as a lifestyle product. For example, oral nicotine products, especially popular oral pouch products from brands like Zyn, are frequently marketed as “tobacco-free” alternatives to smoking because they contain nicotine and not actual tobacco leaf. These “tobacco-free” claims may lead customers to ascribe lower risk to oral nicotine products despite a lack of evidence or proper federal authorization.^{5,6} Additionally, a recent study finds that the oral nicotine pouch brand Fully Loaded markets its products with claims of zero exposure to tobacco-specific nitrosamines (TSNAs) in its tobacco-free synthetic nicotine products, suggesting the products are a safer alternative to tobacco-derived nicotine products.⁷ The company makes these reduced exposure claims despite no authorization from FDA to do so, something that the law requires.⁷

FTC should also collect information on how the companies use sponsored content in major media outlets to shift public perception. Tobacco companies have used major news outlets including The Wall Street Journal and Washington Post to makeover their corporate image, spending millions on ads designed to reposition them as aligned with public health.⁸ Promoting non-combustible tobacco products like IQOS and e-cigarettes through advertorials is part of a larger tobacco industry strategy to overhaul its reputation with new products, rebrand its public image and position itself as working alongside public health, all the while continuing to sell cigarettes. As part of this strategy, the industry has commandeered the term “harm reduction” – the proven public health strategy of providing evidence-based lower harm alternatives for those who do not quit using harmful substances – as part of its business strategy to expand its user base.

Cigar Marketing Data Must Also Be Collected

While not the subject of this particular information collection, Truth Initiative takes the opportunity here to continue to urge FTC to collect similar marketing data on cigars as that found in the Cigarette, Smokeless Tobacco, and E-cigarette Reports. Truth Initiative has been advocating that FTC collect these data since at least 2014, and we reiterate that advocacy here. Youth use cigars at rates similar to cigarettes, making marketing information around cigars equally important.² Truth Initiative encourages FTC to issue orders to the manufacturers of these products and produce the reports as soon as possible.



Data on Organic Promotion on Social Media Platforms Must Also Be Collected and FTC Must Take Enforcement Action Against Social Media Influencers for Failing to Disclose Relationships with Brands on Posts

While outside the scope of this particular information collection, Truth Initiative takes the opportunity here to urge FTC to collect information from the companies owning social media platforms like Instagram, Facebook, and TikTok to quantify organic, or unpaid, social promotion of tobacco products by influencers. Tobacco content is commonplace on social media. Research shows exposure to tobacco content on social media doubles the odds of tobacco use among young people compared to those who are not exposed.⁹ Tobacco-related content on social media contributes to an overall problem of normalization of smoking and vaping in pop culture, where it is often portrayed as glamorous, edgy, and fashionable. These images have influence, especially among youth and young adults, who are uniquely susceptible to social and environmental influences to use tobacco. Celebrities and influencers, many of whom have millions of young followers, can be seen posting photos of themselves smoking or vaping on their social media platforms. A 2018 Truth Initiative analysis found that these “smoking selfies” may help recruit young users, normalize tobacco use, and effectively turn celebrities into unpaid spokespeople for the tobacco industry.¹⁰ The current FTC Cigarette and Smokeless Tobacco reports do not include this information, thus leaving out a crucial and significant segment of how tobacco product use is promoted.

Additionally, as we stated in a letter to you in February 2023, Truth Initiative is concerned about influencer compliance with FTC advertising regulations. A Truth Initiative study examining vaping influencers on Instagram who have worked with vaping brands to promote vaping products found that most influencer posts promoting vaping products were unambiguous vaping advertisements promoting a specific brand or product.¹¹ Despite being unambiguously branded, only one of the 262 vape-related posts disclosed brand relationships, complying with FTC’s requirements. 14.3 percent of the posts included links to purchase the advertised product, which signified, but did not disclose a paid relationship between the influencer and the brand.¹¹ The study shows there is little influencer compliance with current FTC guidelines when it comes to vaping products. FTC’s 2019 guidance on disclosures for social media influencers clearly states that influencers must disclose when you have any relationship with a brand and that tags, likes, and similar ways of showing you like a brand are endorsements. Additionally, the guidance states influencers must make sure people will see and understand the disclosure by placing it with the endorsement message itself. This social media deceptive advertising by influencers substantially penetrates the market and appears to target young consumers. Failing to disclose brand relationships is a direct violation of FTC’s Endorsement Guides and should therefore be found by FTC to violate Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. FTC has been and continues to be essential in protecting the public health from the tobacco industry’s continual deceptive advertising, and has also taken enforcement action against influencers for failing to disclose



relationships with brands on their social media posts. We urge FTC to do so now as well in order to stop this deceptive social media advertising.

Conclusion

The FTC Cigarette and Smokeless Tobacco Reports are invaluable resources of information on the tactics the tobacco industry uses to market its addictive and harmful products. We believe the utility of these reports would be even greater if FTC makes the suggested changes above, and can help in developing evidence-based, life-saving policies with regard to tobacco marketing and advertising. Please contact Stacey Younger Gagosian, Vice President of Public Policy at sgagosian@truthinitiative.org if you have further questions.

Sincerely,

Kathy Crosby
CEO and President



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